

AMENDED IN SENATE JULY 15, 2015

AMENDED IN SENATE JUNE 29, 2015

AMENDED IN ASSEMBLY MARCH 5, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 139**

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**Introduced by Assembly Member Gatto**  
**(Coauthors: Assembly Members Chávez, Mayes, and Waldron)**

January 9, 2015

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An act to amend Sections 2337 and 2040 of the Family Code, to amend Sections 250, 267, 279, 2580, 5000, 5302, 13111, 13206, and 13562 of, to amend and renumber Sections 5600, 5601, 5602, 5603, and 5604 of, to add Section 69 to, to add the heading of Chapter 3 (commencing with Section 5040) to Part 1 of Division 5 of, to add and repeal Part 4 (commencing with Section 5600) of Division 5 of, and to repeal the heading of Part 4 (commencing with Section 5600) of Division 5 of, the Probate Code, relating to nonprobate transfers.

### LEGISLATIVE COUNSEL'S DIGEST

AB 139, as amended, Gatto. Nonprobate transfers: revocable transfer upon death deeds.

(1) Existing law provides that a person may pass real property to a beneficiary at death by various methods including by will, intestate succession, trust, and titling the property in joint tenancy, among others.

This bill would, until January 1, 2021, create the revocable transfer on death deed (revocable TOD deed), as defined, which would transfer real property on the death of its owner without a probate proceeding, according to specified rules. The bill would require that a person have the capacity to contract in order to make or revoke the deed and would

require that the deed be in a statutory form provided for this purpose. The bill would require that a revocable TOD deed be signed, dated, acknowledged, and recorded, as specified, to be effective. The bill would provide, among other things, that the deed, during the owner's life, does not affect his or her ownership rights and, specifically, is part of the owner's estate for the purpose of Medi-Cal eligibility and reimbursement. The bill would void a revocable TOD deed if, at the time of the owner's death, the property is titled in joint tenancy or as community property with right of survivorship. The bill would establish priorities for creditor claims against the owner and the beneficiary of the deed in connection with the property transferred and limits on the liability of the beneficiary. The bill would establish a process for contesting the transfer of real property by a revocable TOD deed. The bill would make other conforming and technical changes. The bill would require the California Law Revision Commission to study and make recommendations regarding the revocable TOD deed to the Legislature by January 1, 2020.

(2) Existing law provides that a person who feloniously and intentionally kills a decedent is not entitled to specified property, interests, or benefits, including any gifts of personal property made in view of impending death.

This bill would specify that a person who feloniously and intentionally kills a decedent is not entitled generally to property and interests that are transferred outside of probate, including real property transferred by a revocable TOD deed.

(3) Existing law establishes simplified procedures for dealing with a decedent's estate valued under \$150,000, including authorizing the successor of the decedent to collect and distribute property due the decedent without letters of administration or awaiting probate of a will. Existing law provides that a beneficiary who receives real or personal property under these circumstances, as specified, may be liable to the estate if probate proceedings are subsequently commenced. Existing law provides, in this context, that a spouse has liability for the debts of a deceased spouse if the decedent's property is in the control of the surviving spouse. Existing law permits a court judgment to enforce liability in these instances only to the extent necessary to protect the heirs, devisees, and creditors of the decedent.

This bill would delete the reference to court judgment and provide instead that the personal representative of the estate is permitted to

enforce liability only to the extent necessary to protect the heirs, devisees, and creditors of the decedent.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2337 of the Family Code is amended to  
2 read:

3 2337. (a) In a proceeding for dissolution of marriage, the court,  
4 upon noticed motion, may sever and grant an early and separate  
5 trial on the issue of the dissolution of the status of the marriage  
6 apart from other issues.

7 (b) A preliminary declaration of disclosure with a completed  
8 schedule of assets and debts shall be served on the nonmoving  
9 party with the noticed motion unless it has been served previously,  
10 or unless the parties stipulate in writing to defer service of the  
11 preliminary declaration of disclosure until a later time.

12 (c) The court may impose upon a party any of the following  
13 conditions on granting a severance of the issue of the dissolution  
14 of the status of the marriage, and in case of that party's death, an  
15 order of any of the following conditions continues to be binding  
16 upon that party's estate:

17 (1) The party shall indemnify and hold the other party harmless  
18 from any taxes, reassessments, interest, and penalties payable by  
19 the other party in connection with the division of the community  
20 estate that would not have been payable if the parties were still  
21 married at the time the division was made.

22 (2) Until judgment has been entered on all remaining issues and  
23 has become final, the party shall maintain all existing health and  
24 medical insurance coverage for the other party and any minor  
25 children as named dependents, so long as the party is eligible to  
26 do so. If at any time during this period the party is not eligible to  
27 maintain that coverage, the party shall, at the party's sole expense,  
28 provide and maintain health and medical insurance coverage that  
29 is comparable to the existing health and medical insurance coverage  
30 to the extent it is available. To the extent that coverage is not  
31 available, the party shall be responsible to pay, and shall  
32 demonstrate to the court's satisfaction the ability to pay, for the  
33 health and medical care for the other party and the minor children,

1 to the extent that care would have been covered by the existing  
2 insurance coverage but for the dissolution of marital status, and  
3 shall otherwise indemnify and hold the other party harmless from  
4 any adverse consequences resulting from the loss or reduction of  
5 the existing coverage. For purposes of this subdivision, “health  
6 and medical insurance coverage” includes any coverage for which  
7 the parties are eligible under any group or individual health or  
8 other medical plan, fund, policy, or program.

9 (3) Until judgment has been entered on all remaining issues and  
10 has become final, the party shall indemnify and hold the other  
11 party harmless from any adverse consequences to the other party  
12 if the bifurcation results in a termination of the other party’s right  
13 to a probate homestead in the residence in which the other party  
14 resides at the time the severance is granted.

15 (4) Until judgment has been entered on all remaining issues and  
16 has become final, the party shall indemnify and hold the other  
17 party harmless from any adverse consequences to the other party  
18 if the bifurcation results in the loss of the rights of the other party  
19 to a probate family allowance as the surviving spouse of the party.

20 (5) Until judgment has been entered on all remaining issues and  
21 has become final, the party shall indemnify and hold the other  
22 party harmless from any adverse consequences to the other party  
23 if the bifurcation results in the loss of the other party’s rights with  
24 respect to any retirement, survivor, or deferred compensation  
25 benefits under any plan, fund, or arrangement, or to any elections  
26 or options associated therewith, to the extent that the other party  
27 would have been entitled to those benefits or elections as the spouse  
28 or surviving spouse of the party.

29 (6) The party shall indemnify and hold the other party harmless  
30 from any adverse consequences if the bifurcation results in the  
31 loss of rights to social security benefits or elections to the extent  
32 the other party would have been entitled to those benefits or  
33 elections as the surviving spouse of the party.

34 (7) (A) The court may make an order pursuant to paragraph (3)  
35 of subdivision (b) of Section 5040 of the Probate Code, if  
36 appropriate, that a party maintain a beneficiary designation for a  
37 nonprobate transfer, as described in Section 5000 of the Probate  
38 Code, for a spouse or domestic partner for up to one-half of or,  
39 upon a showing of good cause, for all of a nonprobate transfer  
40 asset until judgment has been entered with respect to the

1 community ownership of that asset, and until the other party's  
2 interest therein has been distributed to him or her.

3 (B) Except upon a showing of good cause, this paragraph does  
4 not apply to any of the following:

5 (i) A nonprobate transfer described in Section 5000 of the  
6 Probate Code that was not created by either party or that was  
7 acquired by either party by gift, descent, or devise.

8 (ii) An irrevocable trust.

9 (iii) A trust of which neither party is the grantor.

10 (iv) Powers of appointment under a trust instrument that was  
11 not created by either party or of which neither party is a grantor.

12 (v) The execution and filing of a disclaimer pursuant to Part 8  
13 (commencing with Section 260) of Division 2 of the Probate Code.

14 (vi) The appointment of a party as a trustee.

15 (8) In order to preserve the ability of the party to defer the  
16 distribution of the Individual Retirement Account or annuity (IRA)  
17 established under Section 408 or 408A of the Internal Revenue  
18 Code of 1986, as amended, (IRC) upon the death of the other party,  
19 the court may require that one-half, or all upon a showing of good  
20 cause, of the community interest in any IRA, by or for the benefit  
21 of the party, be assigned and transferred to the other party pursuant  
22 to Section 408(d)(6) of the Internal Revenue Code. This paragraph  
23 does not limit the power granted pursuant to subdivision (g).

24 (9) Upon a showing that circumstances exist that would place  
25 a substantial burden of enforcement upon either party's community  
26 property rights or would eliminate the ability of the surviving party  
27 to enforce his or her community property rights if the other party  
28 died before the division and distribution or compliance with any  
29 court-ordered payment of any community property interest therein,  
30 including, but not limited to, a situation in which preemption under  
31 federal law applies to an asset of a party, or purchase by a bona  
32 fide purchaser has occurred, the court may order a specific security  
33 interest designed to reduce or eliminate the likelihood that a  
34 postmortem enforcement proceeding would be ineffective or  
35 unduly burdensome to the surviving party. For this purpose, those  
36 orders may include, but are not limited to, any of the following:

37 (A) An order that the party provide an undertaking.

38 (B) An order to provide a security interest by Qualified Domestic  
39 Relations Order from that party's share of a retirement plan or  
40 plans.

1 (C) An order for the creation of a trust as defined in paragraph  
2 (2) of subdivision (a) of Section 82 of the Probate Code.

3 (D) An order for other arrangements as may be reasonably  
4 necessary and feasible to provide appropriate security in the event  
5 of the party's death before judgment has been entered with respect  
6 to the community ownership of that asset, and until the other  
7 party's interest therein has been distributed to him or her.

8 (E) If a retirement plan is not subject to an enforceable court  
9 order for the payment of spousal survivor benefits to the other  
10 party, an interim order requiring the party to pay or cause to be  
11 paid, and to post adequate security for the payment of, any survivor  
12 benefit that would have been payable to the other party on the  
13 death of the party but for the judgment granting a dissolution of  
14 the status of the marriage, pending entry of judgment on all  
15 remaining issues.

16 (10) Any other condition the court determines is just and  
17 equitable.

18 (d) Prior to, or simultaneously with, entry of judgment granting  
19 dissolution of the status of the marriage, all of the following shall  
20 occur:

21 (1) The party's retirement or pension plan shall be joined as a  
22 party to the proceeding for dissolution, unless joinder is precluded  
23 or made unnecessary by Title 1 of the federal Employee Retirement  
24 Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.), as  
25 amended (ERISA), or any other applicable law.

26 (2) To preserve the claims of each spouse in all retirement plan  
27 benefits upon entry of judgment granting a dissolution of the status  
28 of the marriage, the court shall enter one of the following in  
29 connection with the judgment for each retirement plan in which  
30 either party is a participant:

31 (A) An order pursuant to Section 2610 disposing of each party's  
32 interest in retirement plan benefits, including survivor and death  
33 benefits.

34 (B) An interim order preserving the nonemployee party's right  
35 to retirement plan benefits, including survivor and death benefits,  
36 pending entry of judgment on all remaining issues.

37 (C) An attachment to the judgment granting a dissolution of the  
38 status of the marriage, as follows:  
39

1 EACH PARTY (insert names and addresses) IS  
 2 PROVISIONALLY AWARDED WITHOUT PREJUDICE  
 3 AND SUBJECT TO ADJUSTMENT BY A SUBSEQUENT  
 4 DOMESTIC RELATIONS ORDER, A SEPARATE  
 5 INTEREST EQUAL TO ONE-HALF OF ALL BENEFITS  
 6 ACCRUED OR TO BE ACCRUED UNDER THE PLAN  
 7 (name each plan individually) AS A RESULT OF  
 8 EMPLOYMENT OF THE OTHER PARTY DURING THE  
 9 MARRIAGE OR DOMESTIC PARTNERSHIP AND PRIOR  
 10 TO THE DATE OF SEPARATION. IN ADDITION,  
 11 PENDING FURTHER NOTICE, THE PLAN SHALL, AS  
 12 ALLOWED BY LAW, OR IN THE CASE OF A  
 13 GOVERNMENTAL PLAN, AS ALLOWED BY THE  
 14 TERMS OF THE PLAN, CONTINUE TO TREAT THE  
 15 PARTIES AS MARRIED OR DOMESTIC PARTNERS FOR  
 16 PURPOSES OF ANY SURVIVOR RIGHTS OR BENEFITS  
 17 AVAILABLE UNDER THE PLAN TO THE EXTENT  
 18 NECESSARY TO PROVIDE FOR PAYMENT OF AN  
 19 AMOUNT EQUAL TO THAT SEPARATE INTEREST OR  
 20 FOR ALL OF THE SURVIVOR BENEFIT IF AT THE TIME  
 21 OF THE DEATH OF THE PARTICIPANT, THERE IS NO  
 22 OTHER ELIGIBLE RECIPIENT OF THE SURVIVOR  
 23 BENEFIT.

24  
 25 (e) The moving party shall promptly serve a copy of any order,  
 26 interim order, or attachment entered pursuant to paragraph (2) of  
 27 subdivision (d), and a copy of the judgment granting a dissolution  
 28 of the status of the marriage, on the retirement or pension plan  
 29 administrator.

30 (f) A judgment granting a dissolution of the status of the  
 31 marriage shall expressly reserve jurisdiction for later determination  
 32 of all other pending issues.

33 (g) If the party dies after the entry of judgment granting a  
 34 dissolution of marriage, any obligation imposed by this section  
 35 shall be enforceable against any asset, including the proceeds  
 36 thereof, against which these obligations would have been  
 37 enforceable prior to the person's death.

38 SEC. 2. Section 2040 of the Family Code is amended to read:

2040. (a) In addition to the contents required by Section 412.20 of the Code of Civil Procedure, the summons shall contain a temporary restraining order:

(1) Restraining both parties from removing the minor child or children of the parties, if any, from the state, or from applying for a new or replacement passport for the minor child or children, without the prior written consent of the other party or an order of the court.

(2) Restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life, and requiring each party to notify the other party of any proposed extraordinary expenditures at least five business days before incurring those expenditures and to account to the court for all extraordinary expenditures made after service of the summons on that party.

Notwithstanding the foregoing, nothing in the restraining order shall preclude a party from using community property, quasi-community property, or the party's own separate property to pay reasonable attorney's fees and costs in order to retain legal counsel in the proceeding. A party who uses community property or quasi-community property to pay his or her attorney's retainer for fees and costs under this provision shall account to the community for the use of the property. A party who uses other property that is subsequently determined to be the separate property of the other party to pay his or her attorney's retainer for fees and costs under this provision shall account to the other party for the use of the property.

(3) Restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability, held for the benefit of the parties and their child or children for whom support may be ordered.

(4) Restraining both parties from creating a nonprobate transfer or modifying a nonprobate transfer in a manner that affects the disposition of property subject to the transfer, without the written consent of the other party or an order of the court.

(b) Nothing in this section restrains any of the following:



1 (1) Creation, modification, or revocation of a will.

2 (2) Revocation of a nonprobate transfer, including a revocable  
3 trust, pursuant to the instrument, provided that notice of the change  
4 is filed and served on the other party before the change takes effect.

5 (3) Elimination of a right of survivorship to property, provided  
6 that notice of the change is filed and served on the other party  
7 before the change takes effect.

8 (4) Creation of an unfunded revocable or irrevocable trust.

9 (5) Execution and filing of a disclaimer pursuant to Part 8  
10 (commencing with Section 260) of Division 2 of the Probate Code.

11 (c) In all actions filed on and after January 1, 1995, the summons  
12 shall contain the following notice:

13  
14 “WARNING: California law provides that, for purposes of  
15 division of property upon dissolution of marriage or legal  
16 separation, property acquired by the parties during marriage in  
17 joint form is presumed to be community property. If either party  
18 to this action should die before the jointly held community property  
19 is divided, the language of how title is held in the deed (i.e., joint  
20 tenancy, tenants in common, or community property) will be  
21 controlling and not the community property presumption. You  
22 should consult your attorney if you want the community property  
23 presumption to be written into the recorded title to the property.”  
24

25 (d) For the purposes of this section:

26 (1) “Nonprobate transfer” means an instrument, other than a  
27 will, that makes a transfer of property on death, including a  
28 revocable trust, pay on death account in a financial institution,  
29 Totten trust, transfer on death registration of personal property,  
30 revocable transfer on death deed, or other instrument of a type  
31 described in Section 5000 of the Probate Code.

32 (2) “Nonprobate transfer” does not include a provision for the  
33 transfer of property on death in an insurance policy or other  
34 coverage held for the benefit of the parties and their child or  
35 children for whom support may be ordered, to the extent that the  
36 provision is subject to paragraph (3) of subdivision (a).

37 (e) The restraining order included in the summons shall include  
38 descriptions of the notices required by paragraphs (2) and (3) of  
39 subdivision (b).

40 SEC. 3. Section 69 is added to the Probate Code, to read:

69. “Revocable transfer on death deed” or “revocable TOD deed” means a revocable transfer on death deed as described in Section 5614.

SEC. 4. Section 250 of the Probate Code is amended to read:

250. (a) A person who feloniously and intentionally kills the decedent is not entitled to any of the following:

(1) Any property, interest, or benefit under a will of the decedent, or a trust created by or for the benefit of the decedent or in which the decedent has an interest, including any general or special power of appointment conferred by the will or trust on the killer and any nomination of the killer as executor, trustee, guardian, or conservator or custodian made by the will or trust.

(2) Any property of the decedent by intestate succession.

(3) Any of the decedent’s quasi-community property the killer would otherwise acquire under Section 101 or 102 upon the death of the decedent.

(4) Any property of the decedent under Division 5 (commencing with Section 5000).

(5) Any property of the decedent under Part 3 (commencing with Section 6500) of Division 6.

(b) In the cases covered by subdivision (a):

(1) The property interest or benefit referred to in paragraph (1) of subdivision (a) passes as if the killer had predeceased the decedent and Section 21110 does not apply.

(2) Any property interest or benefit referred to in paragraph (1) of subdivision (a) which passes under a power of appointment and by reason of the death of the decedent passes as if the killer had predeceased the decedent, and Section 673 does not apply.

(3) Any nomination in a will or trust of the killer as executor, trustee, guardian, conservator, or custodian which becomes effective as a result of the death of the decedent shall be interpreted as if the killer had predeceased the decedent.

SEC. 5. Section 267 of the Probate Code is amended to read:

267. (a) “Interest” includes the whole of any property, real or personal, legal or equitable, or any fractional part, share, or particular portion or specific assets thereof, or any estate in any such property, or any power to appoint, consume, apply, or expend property, or any other right, power, privilege, or immunity relating to property.

(b) “Interest” includes, but is not limited to, an interest created in any of the following manners:

- (1) By intestate succession.
  - (2) Under a will.
  - (3) Under a trust.
  - (4) By succession to a disclaimed interest.
  - (5) By virtue of an election to take against a will.
  - (6) By creation of a power of appointment.
  - (7) By exercise or nonexercise of a power of appointment.
  - (8) By an inter vivos gift, whether outright or in trust.
  - (9) By surviving the death of a depositor of a Totten trust account or P.O.D. account.
  - (10) Under an insurance or annuity contract.
  - (11) By surviving the death of another joint tenant.
  - (12) Under an employee benefit plan.
  - (13) Under an individual retirement account, annuity, or bond.
  - (14) Under a transfer on death beneficiary designation in a deed or other instrument.
  - (15) Any other interest created by a testamentary or inter vivos instrument or by operation of law.
- SEC. 6. Section 279 of the Probate Code is amended to read:
279. (a) A disclaimer to be effective shall be filed within a reasonable time after the person able to disclaim acquires knowledge of the interest.
- (b) In the case of any of the following interests, a disclaimer is conclusively presumed to have been filed within a reasonable time if it is filed within nine months after the death of the creator of the interest or within nine months after the interest becomes indefeasibly vested, whichever occurs later:
- (1) An interest created under a will.
  - (2) An interest created by intestate succession.
  - (3) An interest created pursuant to the exercise or nonexercise of a testamentary power of appointment.
  - (4) An interest created by surviving the death of a depositor of a Totten trust account or P.O.D. account.
  - (5) An interest created under a life insurance or annuity contract.
  - (6) An interest created by surviving the death of another joint tenant.
  - (7) An interest created under an employee benefit plan.

1 (8) An interest created under an individual retirement account,  
2 annuity, or bond.

3 (9) An interest created under a transfer on death beneficiary  
4 designation in a deed or other instrument.

5 (c) In the case of an interest created by a living trust, an interest  
6 created by the exercise of a presently exercisable power of  
7 appointment, an outright inter vivos gift, a power of appointment,  
8 or an interest created or increased by succession to a disclaimed  
9 interest, a disclaimer is conclusively presumed to have been filed  
10 within a reasonable time if it is filed within nine months after  
11 whichever of the following times occurs latest:

12 (1) The time of the creation of the trust, the exercise of the power  
13 of appointment, the making of the gift, the creation of the power  
14 of appointment, or the disclaimer of the disclaimed property.

15 (2) The time the first knowledge of the interest is acquired by  
16 the person able to disclaim.

17 (3) The time the interest becomes indefeasibly vested.

18 (d) In case of an interest not described in subdivision (b) or (c),  
19 a disclaimer is conclusively presumed to have been filed within a  
20 reasonable time if it is filed within nine months after whichever  
21 of the following times occurs later:

22 (1) The time the first knowledge of the interest is acquired by  
23 the person able to disclaim.

24 (2) The time the interest becomes indefeasibly vested.

25 (e) In the case of a future estate, a disclaimer is conclusively  
26 presumed to have been filed within a reasonable time if it is filed  
27 within whichever of the following times occurs later:

28 (1) Nine months after the time the interest becomes an estate in  
29 possession.

30 (2) The time specified in subdivision (b), (c), or (d), whichever  
31 is applicable.

32 (f) If the disclaimer is not filed within the time provided in  
33 subdivision (b), (c), (d), or (e), the disclaimant has the burden of  
34 establishing that the disclaimer was filed within a reasonable time  
35 after the disclaimant acquired knowledge of the interest.

36 SEC. 7. Section 2580 of the Probate Code is amended to read:

37 2580. (a) The conservator or other interested person may file  
38 a petition under this article for an order of the court authorizing  
39 or requiring the conservator to take a proposed action for any one  
40 or more of the following purposes:

1 (1) Benefiting the conservatee or the estate.

2 (2) Minimizing current or prospective taxes or expenses of  
3 administration of the conservatorship estate or of the estate upon  
4 the death of the conservatee.

5 (3) Providing gifts for any purposes, and to any charities,  
6 relatives (including the other spouse or domestic partner), friends,  
7 or other objects of bounty, as would be likely beneficiaries of gifts  
8 from the conservatee.

9 (b) The action proposed in the petition may include, but is not  
10 limited to, the following:

11 (1) Making gifts of principal or income, or both, of the estate,  
12 outright or in trust.

13 (2) Conveying or releasing the conservatee's contingent and  
14 expectant interests in property, including marital property rights  
15 and any right of survivorship incident to joint tenancy or tenancy  
16 by the entirety.

17 (3) Exercising or releasing the conservatee's powers as donee  
18 of a power of appointment.

19 (4) Entering into contracts.

20 (5) Creating for the benefit of the conservatee or others,  
21 revocable or irrevocable trusts of the property of the estate, which  
22 trusts may extend beyond the conservatee's disability or life. A  
23 special needs trust for money paid pursuant to a compromise or  
24 judgment for a conservatee may be established only under Chapter  
25 4 (commencing with Section 3600) of Part 8, and not under this  
26 article.

27 (6) Transferring to a trust created by the conservator or  
28 conservatee any property unintentionally omitted from the trust.

29 (7) Exercising options of the conservatee to purchase or  
30 exchange securities or other property.

31 (8) Exercising the rights of the conservatee to elect benefit or  
32 payment options, to terminate, to change beneficiaries or  
33 ownership, to assign rights, to borrow, or to receive cash value in  
34 return for a surrender of rights under any of the following:

35 (A) Life insurance policies, plans, or benefits.

36 (B) Annuity policies, plans, or benefits.

37 (C) Mutual fund and other dividend investment plans.

38 (D) Retirement, profit sharing, and employee welfare plans and  
39 benefits.

1 (9) Exercising the right of the conservatee to elect to take under  
2 or against a will.

3 (10) Exercising the right of the conservatee to disclaim any  
4 interest that may be disclaimed under Part 8 (commencing with  
5 Section 260) of Division 2.

6 (11) Exercising the right of the conservatee (A) to revoke or  
7 modify a revocable trust or (B) to surrender the right to revoke or  
8 modify a revocable trust, but the court shall not authorize or require  
9 the conservator to exercise the right to revoke or modify a  
10 revocable trust if the instrument governing the trust (A) evidences  
11 an intent to reserve the right of revocation or modification  
12 exclusively to the conservatee, (B) provides expressly that a  
13 conservator may not revoke or modify the trust, or (C) otherwise  
14 evidences an intent that would be inconsistent with authorizing or  
15 requiring the conservator to exercise the right to revoke or modify  
16 the trust.

17 (12) Making an election referred to in Section 13502 or an  
18 election and agreement referred to in Section 13503.

19 (13) Making a will.

20 (14) Making or revoking a revocable transfer on death deed.

21 SEC. 8. Section 5000 of the Probate Code is amended to read:

22 5000. (a) A provision for a nonprobate transfer on death in an  
23 insurance policy, contract of employment, bond, mortgage,  
24 promissory note, certificated or uncertificated security, account  
25 agreement, custodial agreement, deposit agreement, compensation  
26 plan, pension plan, individual retirement plan, employee benefit  
27 plan, trust, conveyance, deed of gift, revocable transfer on death  
28 deed, marital property agreement, or other written instrument of  
29 a similar nature is not invalid because the instrument does not  
30 comply with the requirements for execution of a will, and this code  
31 does not invalidate the instrument.

32 (b) Included within subdivision (a) are the following:

33 (1) A written provision that moneys or other benefits due to,  
34 controlled by, or owned by a decedent before death shall be paid  
35 after the decedent's death to a person whom the decedent  
36 designates either in the instrument or in a separate writing,  
37 including a will, executed either before or at the same time as the  
38 instrument, or later.

1 (2) A written provision that moneys due or to become due under  
2 the instrument shall cease to be payable in the event of the death  
3 of the promisee or the promisor before payment or demand.

4 (3) A written provision that any property controlled by or owned  
5 by the decedent before death that is the subject of the instrument  
6 shall pass to a person whom the decedent designates either in the  
7 instrument or in a separate writing, including a will, executed either  
8 before or at the same time as the instrument, or later.

9 (c) Nothing in this section limits the rights of creditors under  
10 any other law.

11 SEC. 9. Section 5302 of the Probate Code is amended to read:

12 5302. Subject to Section 5040:

13 (a) Sums remaining on deposit at the death of a party to a joint  
14 account belong to the surviving party or parties as against the estate  
15 of the decedent unless there is clear and convincing evidence of a  
16 different intent. If there are two or more surviving parties, their  
17 respective ownerships during lifetime are in proportion to their  
18 previous ownership interests under Section 5301 augmented by  
19 an equal share for each survivor of any interest the decedent may  
20 have owned in the account immediately before the decedent's  
21 death; and the right of survivorship continues between the surviving  
22 parties.

23 (b) If the account is a P.O.D. account:

24 (1) On death of one of two or more parties, the rights to any  
25 sums remaining on deposit are governed by subdivision (a).

26 (2) On death of the sole party or of the survivor of two or more  
27 parties, (A) any sums remaining on deposit belong to the P.O.D.  
28 payee or payees if surviving, or to the survivor of them if one or  
29 more die before the party, (B) if two or more P.O.D. payees  
30 survive, any sums remaining on deposit belong to them in equal  
31 and undivided shares unless the terms of the account or deposit  
32 agreement expressly provide for different shares, and (C) if two  
33 or more P.O.D. payees survive, there is no right of survivorship  
34 in the event of death of a P.O.D. payee thereafter unless the terms  
35 of the account or deposit agreement expressly provide for  
36 survivorship between them.

37 (c) If the account is a Totten trust account:

38 (1) On death of one of two or more trustees, the rights to any  
39 sums remaining on deposit are governed by subdivision (a).

(2) On death of the sole trustee or the survivor of two or more trustees, (A) any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear and convincing evidence of a different intent, (B) if two or more beneficiaries survive, any sums remaining on deposit belong to them in equal and undivided shares unless the terms of the account or deposit agreement expressly provide for different shares, and (C) if two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(d) In other cases, the death of any party to a multiparty account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of the decedent's estate.

(e) A right of survivorship arising from the express terms of the account or under this section, a beneficiary designation in a Totten trust account, or a P.O.D. payee designation, cannot be changed by will.

SEC. 10. The heading of Part 4 (commencing with Section 5600) of Division 5 of the Probate Code is repealed.

SEC. 11. A heading is added as Chapter 3 (commencing with Section 5040) to Part 1 of Division 5 of the Probate Code, immediately preceding Section 5040, to read:

### CHAPTER 3. NONPROBATE TRANSFER TO FORMER SPOUSE

SEC. 12. Section 5600 of the Probate Code is amended and renumbered to read:

5040. (a) Except as provided in subdivision (b), a nonprobate transfer to the transferor's former spouse, in an instrument executed by the transferor before or during the marriage, fails if, at the time of the transferor's death, the former spouse is not the transferor's surviving spouse as defined in Section 78, as a result of the dissolution or annulment of the marriage. A judgment of legal separation that does not terminate the status of husband and wife is not a dissolution for purposes of this section.

(b) Subdivision (a) does not cause a nonprobate transfer to fail in any of the following cases:



1 (1) The nonprobate transfer is not subject to revocation by the  
2 transferor at the time of the transferor's death.

3 (2) There is clear and convincing evidence that the transferor  
4 intended to preserve the nonprobate transfer to the former spouse.

5 (3) A court order that the nonprobate transfer be maintained on  
6 behalf of the former spouse is in effect at the time of the  
7 transferor's death.

8 (c) Where a nonprobate transfer fails by operation of this section,  
9 the instrument making the nonprobate transfer shall be treated as  
10 it would if the former spouse failed to survive the transferor.

11 (d) Nothing in this section affects the rights of a subsequent  
12 purchaser or encumbrancer for value in good faith who relies on  
13 the apparent failure of a nonprobate transfer under this section or  
14 who lacks knowledge of the failure of a nonprobate transfer under  
15 this section.

16 (e) As used in this section, "nonprobate transfer" means a  
17 provision, other than a provision of a life insurance policy, of either  
18 of the following types:

19 (1) A provision of a type described in Section 5000.

20 (2) A provision in an instrument that operates on death, other  
21 than a will, conferring a power of appointment or naming a trustee.

22 SEC. 13. Section 5601 of the Probate Code is amended and  
23 renumbered to read:

24 5042. (a) Except as provided in subdivision (b), a joint tenancy  
25 between the decedent and the decedent's former spouse, created  
26 before or during the marriage, is severed as to the decedent's  
27 interest if, at the time of the decedent's death, the former spouse  
28 is not the decedent's surviving spouse as defined in Section 78, as  
29 a result of the dissolution or annulment of the marriage. A judgment  
30 of legal separation that does not terminate the status of husband  
31 and wife is not a dissolution for purposes of this section.

32 (b) Subdivision (a) does not sever a joint tenancy in either of  
33 the following cases:

34 (1) The joint tenancy is not subject to severance by the decedent  
35 at the time of the decedent's death.

36 (2) There is clear and convincing evidence that the decedent  
37 intended to preserve the joint tenancy in favor of the former spouse.

38 (c) Nothing in this section affects the rights of a subsequent  
39 purchaser or encumbrancer for value in good faith who relies on

1 an apparent severance under this section or who lacks knowledge  
2 of a severance under this section.

3 (d) For purposes of this section, property held in “joint tenancy”  
4 includes property held as community property with right of  
5 survivorship, as described in Section 682.1 of the Civil Code.

6 SEC. 14. Section 5602 of the Probate Code is amended and  
7 renumbered to read:

8 5044. (a) Nothing in this chapter affects the rights of a  
9 purchaser or encumbrancer of real property for value who in good  
10 faith relies on an affidavit or a declaration under penalty of perjury  
11 under the laws of this state that states all of the following:

12 (1) The name of the decedent.

13 (2) The date and place of the decedent’s death.

14 (3) A description of the real property transferred to the affiant  
15 or declarant by an instrument making a nonprobate transfer or by  
16 operation of joint tenancy survivorship.

17 (4) Either of the following, as appropriate:

18 (A) The affiant or declarant is the surviving spouse of the  
19 decedent.

20 (B) The affiant or declarant is not the surviving spouse of the  
21 decedent, but the rights of the affiant or declarant to the described  
22 property are not affected by Section 5040 or 5042.

23 (b) A person relying on an affidavit or declaration made pursuant  
24 to subdivision (a) has no duty to inquire into the truth of the matters  
25 stated in the affidavit or declaration.

26 (c) An affidavit or declaration made pursuant to subdivision (a)  
27 may be recorded.

28 SEC. 15. Section 5603 of the Probate Code is amended and  
29 renumbered to read:

30 5046. Nothing in this chapter is intended to limit the court’s  
31 authority to order a party to a dissolution or annulment of marriage  
32 to maintain the former spouse as a beneficiary on any nonprobate  
33 transfer described in this chapter, or to preserve a joint tenancy in  
34 favor of the former spouse.

35 SEC. 16. Section 5604 of the Probate Code is amended and  
36 renumbered to read:

37 5048. (a) This chapter, formerly Part 4 (commencing with  
38 Section 5600), is operative on January 1, 2002.

39 (b) Except as provided in subdivision (c), this chapter applies  
40 to an instrument making a nonprobate transfer or creating a joint

1 tenancy whether executed before, on, or after the operative date  
2 of this chapter.

3 (c) Sections 5040 and 5042 do not apply, and the applicable  
4 law in effect before the operative date of this chapter applies, to  
5 an instrument making a nonprobate transfer or creating a joint  
6 tenancy in either of the following circumstances:

7 (1) The person making the nonprobate transfer or creating the  
8 joint tenancy dies before the operative date of this chapter.

9 (2) The dissolution of marriage or other event that terminates  
10 the status of the nonprobate transfer beneficiary or joint tenant as  
11 a surviving spouse occurs before the operative date of this chapter.

12 SEC. 17. Part 4 (commencing with Section 5600) is added to  
13 Division 5 of the Probate Code, to read:

14  
15 **PART 4. REVOCABLE TRANSFER ON DEATH DEED**

16  
17 **CHAPTER 1. GENERAL PROVISIONS**

18  
19 **Article 1. Preliminary Provisions**

20  
21 5600. (a) This part applies to a revocable transfer on death  
22 deed made by a transferor who dies on or after January 1, 2016,  
23 whether the deed was executed or recorded before, on, or after  
24 January 1, 2016.

25 (b) Nothing in this part invalidates an otherwise valid transfer  
26 under Section 5602.

27 (c) This part shall remain in effect only until January 1, 2021,  
28 and as of that date is repealed, unless a later enacted statute, that  
29 is enacted before January 1, 2021, deletes or extends that date. The  
30 repeal of this part pursuant to this subdivision shall not affect the  
31 validity or effect of a revocable transfer on death deed that is  
32 executed before January 1, 2021, and shall not affect the authority  
33 of the transferor to revoke a transfer on death deed by recording  
34 a signed and notarized instrument that is substantially in the form  
35 specified in Section 5644.

36 5602. This part does not preclude use of any other method of  
37 conveying real property that is permitted by law and that has the  
38 effect of postponing enjoyment of the property until the death of  
39 the owner.

1 5604. (a) Except as provided in subdivision (b), nothing in  
2 this part affects the application to a revocable transfer on death  
3 deed of any other statute governing a nonprobate transfer on death,  
4 including, but not limited to, any of the following provisions that  
5 by its terms or intent would apply to a nonprobate transfer on death:

6 (1) Division 2 (commencing with Section 100).

7 (2) Part 1 (commencing with Section 5000) of this division.

8 (3) Division 10 (commencing with Section 20100).

9 (4) Division 11 (commencing with Section 21101).

10 (b) Notwithstanding subdivision (a), a provision of another  
11 statute governing a nonprobate transfer on death does not apply  
12 to a revocable transfer on death deed to the extent this part provides  
13 a contrary rule.

## 14 Article 2. Definitions

15  
16  
17 5606. Unless the provision or context otherwise requires, the  
18 definitions in this article govern the construction of this part.

19 5608. “Beneficiary” means a person named in a revocable  
20 transfer on death deed as transferee of the property.

21 ~~5610. “Real property” means the fee or an interest in real~~  
22 ~~property. The term includes, but is not limited to, any of the~~  
23 ~~following interests in real property:~~

24 ~~(a) A leasehold.~~

25 ~~(b) An interest in a common interest development within the~~  
26 ~~meaning of Section 6534 of the Civil Code.~~

27 ~~(c) An easement, license, permit, or other right in property, to~~  
28 ~~the extent the right is both of the following:~~

29 ~~(1) A recordable interest in property.~~

30 ~~(2) Transferable on death of the owner of the right.~~

31 5610. “Real property” means any of the following:

32 (a) Real property improved with not less than one nor more  
33 than four residential dwelling units.

34 (b) A condominium unit, including the limited common elements  
35 allocated to the exclusive use thereof that form an integral part of  
36 the condominium unit.

37 (c) A single tract of agricultural real estate consisting of 40  
38 acres or less that is improved with a single-family residence.

39 5612. “Recorded” has the meaning provided in Section 1170  
40 of the Civil Code.

1 5614. (a) “Revocable transfer on death deed” means an  
2 instrument created pursuant to this part that does all of the  
3 following:

4 (1) Makes a donative transfer of real property to a named  
5 beneficiary.

6 (2) Operates on the transferor’s death.

7 (3) Remains revocable until the transferor’s death.

8 (b) A revocable transfer on death deed may also be known as  
9 a “revocable TOD deed.”

10 5616. “Transferor” means an owner of real property who makes  
11 a revocable transfer on death deed of the property.

12  
13 CHAPTER 2. EXECUTION AND REVOCATION

14  
15 Article 1. Execution

16  
17 5620. An owner of real property who has the capacity to  
18 contract may make a revocable transfer on death deed of the  
19 property.

20 5622. The transferor shall identify the beneficiary by name in  
21 a revocable transfer on death deed.

22 5624. A revocable transfer on death deed is not effective unless  
23 the transferor signs and dates the deed and acknowledges the deed  
24 before a notary public.

25 5626. (a) A revocable transfer on death deed is not effective  
26 unless the deed is recorded on or before 60 days after the date it  
27 was executed.

28 (b) The transferor is not required to deliver a revocable transfer  
29 on death deed to the beneficiary during the transferor’s life.

30 (c) The beneficiary is not required to accept a revocable transfer  
31 on death deed from the transferor during the transferor’s life.

32 5628. (a) If a revocable transfer on death deed is recorded for  
33 the same property for which another revocable transfer on death  
34 deed is recorded, the later executed deed is the operative instrument  
35 and its recordation revokes the earlier executed deed.

36 (b) Revocation of a revocable transfer on death deed does not  
37 revive an instrument earlier revoked by recordation of that deed.

## Article 2. Revocation

5630. A transferor who has the capacity to contract may revoke a revocable transfer on death deed at any time.

5632. (a) An instrument revoking a revocable transfer on death deed shall be executed and recorded before the transferor's death in the same manner as execution and recordation of a revocable transfer on death deed.

(b) Joinder, consent, or agreement of, or notice to, the beneficiary is not required for revocation of a revocable transfer on death deed.

## Article 3. Statutory Forms

5642. A revocable transfer on death deed shall be substantially in the following form.

(a) The first page of the form shall be substantially the following:

**SIMPLE REVOCABLE TRANSFER ON DEATH (TOD) DEED**

(California Probate Code Section 5642)

Recording Requested By:

When Recorded Mail This Deed To

Name:

Address:

Assessor's Parcel Number:                      Space Above For Recorder's Use

This document is exempt from documentary transfer tax under Rev. & Tax. Code § 11930. This document is exempt from preliminary change of ownership report under Rev. & Tax. Code § 480.3.

**IMPORTANT NOTICE: THIS DEED MUST BE RECORDED ON OR  
BEFORE 60 DAYS AFTER THE DATE IT IS SIGNED AND  
NOTARIZED**

Use this deed to transfer the property described below directly to your named beneficiaries when you die. YOU SHOULD CAREFULLY READ ALL OF THE INFORMATION ON THE OTHER SIDE OF THIS FORM. You may wish to consult an attorney before using this deed. It may have results that you do not want. Provide only the information asked for in the form. DO NOT

1 INSERT ANY OTHER INFORMATION OR INSTRUCTIONS. This form  
2 MUST be RECORDED on or before 60 days after the date it is signed and  
3 notarized or it will not be effective.

4  
5 **PROPERTY DESCRIPTION**

6 Print the legal description of the property affected by this deed:  
7 \_\_\_\_\_  
8

9 **BENEFICIARY(IES)**

10 Print the FULL NAME(S) of the person(s) who will receive the property  
11 on your death (DO NOT use general terms like “my children”) and state the  
12 RELATIONSHIP that each named person has to you (spouse, son, daughter,  
13 friend, etc.):  
14 \_\_\_\_\_  
15 \_\_\_\_\_  
16 \_\_\_\_\_  
17

18 **TRANSFER ON DEATH**

19 I transfer all of my interest in the described property to the named  
20 beneficiary(ies) on my death. I may revoke this deed. When recorded, this  
21 deed revokes any TOD deed that I made before signing this deed.

22 Sign and print your name below (your name should exactly match the name  
23 shown on your title documents):  
24 \_\_\_\_\_

25 \_\_\_\_\_ Date \_\_\_\_\_  
26

27 NOTE: This deed only transfers MY ownership share of the property. The  
28 deed does NOT transfer the share of any co-owner of the property. Any  
29 co-owner who wants to name a TOD beneficiary must execute and RECORD  
30 a SEPARATE deed.

31  
32 **ACKNOWLEDGMENT OF NOTARY**

33  
34 A notary public or other officer completing this certificate verifies only the  
35 identity of the individual who signed the document to which this certificate is  
36 attached, and not the truthfulness, accuracy, or validity of that document.  
37

38 State of California )  
39 County of \_\_\_\_\_ )  
40

On \_\_\_\_\_ before me, (here insert name and title of the officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

(b) Subsequent pages of a form executed under this section shall be in substantially the following form:

#### COMMON QUESTIONS ABOUT THE USE OF THIS FORM

**WHAT DOES THE TOD DEED DO?** When you die, the identified property will transfer to your named beneficiary without probate. The TOD deed has no effect until you die. You can revoke it at any time.

**HOW DO I USE THE TOD DEED?** Complete this form. Have it notarized. RECORD the form in the county where the property is located. The form MUST be recorded on or before 60 days after the date you sign it or the deed has no effect.

**IS THE "LEGAL DESCRIPTION" OF THE PROPERTY NECESSARY?**  
Yes.

**HOW DO I FIND THE "LEGAL DESCRIPTION" OF THE PROPERTY?**  
This information may be on the deed you received when you became an owner of the property. This information may also be available in the office of the county recorder for the county where the property is located. If you are not absolutely sure, consult an attorney.

**HOW DO I "RECORD" THE FORM?** Take the completed and notarized form to the county recorder for the county in which the property is located. Follow the instructions given by the county recorder to make the form part of the official property records.

**WHAT IF I SHARE OWNERSHIP OF THE PROPERTY?** This form only transfers YOUR share of the property. If a co-owner also wants to name a TOD beneficiary, that co-owner must complete and RECORD a separate form.



1 CAN I REVOKE THE TOD DEED IF I CHANGE MY MIND? Yes. You  
2 may revoke the TOD deed at any time. No one, including your beneficiary,  
3 can prevent you from revoking the deed.

4 HOW DO I REVOKE THE TOD DEED? There are three ways to revoke  
5 a recorded TOD deed: (1) Complete, have notarized, and RECORD a  
6 revocation form. (2) Create, have notarized, and RECORD a new TOD deed.  
7 (3) Sell or give away the property, or transfer it to a trust, before your death  
8 and RECORD the deed. A TOD deed can only affect property that you own  
9 when you die. A TOD deed cannot be revoked by will.

10  
11 CAN I REVOKE A TOD DEED BY CREATING A NEW DOCUMENT  
12 THAT DISPOSES OF THE PROPERTY (FOR EXAMPLE, BY CREATING  
13 A NEW TOD DEED OR BY ASSIGNING THE PROPERTY TO A TRUST)?  
14 Yes, but only if the new document is RECORDED. To avoid any doubt, you  
15 may wish to RECORD a TOD deed revocation form before creating the new  
16 instrument. A TOD deed cannot be revoked by will, or by purporting to leave  
17 the subject property to anyone via will.

18 IF I SELL OR GIVE AWAY THE PROPERTY DESCRIBED IN A TOD  
19 DEED, WHAT HAPPENS WHEN I DIE? If the deed or other document used  
20 to transfer your property is RECORDED before your death, the TOD deed  
21 will have no effect. If the transfer document is not RECORDED before your  
22 death, the TOD deed will take effect.

23 I AM BEING PRESSURED TO COMPLETE THIS FORM. WHAT  
24 SHOULD I DO? Do NOT complete this form unless you freely choose to do  
25 so. If you are being pressured to dispose of your property in a way that you  
26 do not want, you may want to alert a family member, friend, the district  
27 attorney, or a senior service agency.

28 DO I NEED TO TELL MY BENEFICIARY ABOUT THE TOD DEED?  
29 No. But secrecy can cause later complications and might make it easier for  
30 others to commit fraud.

31 WHAT DOES MY BENEFICIARY NEED TO DO WHEN I DIE? Your  
32 beneficiary must RECORD evidence of your death (Prob. Code § 210), and  
33 file a change in ownership notice (Rev. & Tax. Code § 480). If you received  
34 Medi-Cal benefits, your beneficiary must notify the State Department of Health  
35 Care Services of your death and provide a copy of your death certificate (Prob.  
36 Code § 215).

37 WHAT IF I NAME MORE THAN ONE BENEFICIARY? Your  
38 beneficiaries will become co-owners in equal shares as tenants in common. If  
39 you want a different result, you should not use this form.  
40

1 HOW DO I NAME BENEFICIARIES? You MUST name your beneficiaries  
2 individually, using each beneficiary's FULL name. You MAY NOT use general  
3 terms to describe beneficiaries, such as "my children." For each beneficiary  
4 that you name, you should briefly state that person's relationship to you (for  
5 example, my spouse, my son, my daughter, my friend, etc.).

6 WHAT IF A BENEFICIARY DIES BEFORE I DO? If all beneficiaries die  
7 before you, the TOD deed has no effect. If a beneficiary dies before you, but  
8 other beneficiaries survive you, the share of the deceased beneficiary will be  
9 divided equally between the surviving beneficiaries. If that is not the result  
10 you want, you should not use the TOD deed.

11 WHAT IS THE EFFECT OF A TOD DEED ON PROPERTY THAT I  
12 OWN AS JOINT TENANCY OR COMMUNITY PROPERTY WITH RIGHT  
13 OF SURVIVORSHIP? If you are the first joint tenant or spouse to die, the  
14 deed is VOID and has no effect. The property transfers to your joint tenant or  
15 surviving spouse and not according to this deed. If you are the last joint tenant  
16 or spouse to die, the deed takes effect and controls the ownership of your  
17 property when you die. If you do not want these results, do not use this form.  
18 The deed does NOT transfer the share of a co-owner of the property. Any  
19 co-owner who wants to name a TOD beneficiary must complete and RECORD  
20 a SEPARATE deed.

21 CAN I ADD OTHER CONDITIONS ON THE FORM? No. If you do, your  
22 beneficiary may need to go to court to clear title.

23 IS PROPERTY TRANSFERRED BY THE TOD DEED SUBJECT TO  
24 MY DEBTS? Yes.

25 DOES THE TOD DEED HELP ME TO AVOID GIFT AND ESTATE  
26 TAXES? No.

27 HOW DOES THE TOD DEED AFFECT PROPERTY TAXES? The TOD  
28 deed has no effect on your property taxes until your death. At that time,  
29 property tax law applies as it would to any other change of ownership.

30 DOES THE TOD DEED AFFECT MY ELIGIBILITY FOR MEDI-CAL?  
31 No.

32 AFTER MY DEATH, WILL MY HOME BE LIABLE FOR  
33 REIMBURSEMENT OF THE STATE FOR MEDI-CAL EXPENDITURES?  
34 Your home may be liable for reimbursement. If you have questions, you should  
35 consult an attorney.

36  
37 5644. A transferor may revoke a revocable transfer on death  
38 deed by an instrument in substantially the following form:

39  
40 **Revocation of**

**Revocable Transfer on Death (TOD) Deed**

(California Probate Code Section 5600)

Recording Requested By:

When Recorded Mail This Deed To

Name:

Address:

Assessor's Parcel Number: Space Above For Recorder's Use

This deed revocation is exempt from documentary transfer tax under Rev. & Tax. Code §11930. This deed revocation is exempt from preliminary change of ownership report under Rev. & Tax. Code § 480.3.

**IMPORTANT NOTICE: THIS FORM MUST BE RECORDED TO BE EFFECTIVE**

This revocation form MUST be RECORDED before your death or it will not be effective. This revocation form only affects a transfer on death deed that YOU made. A transfer on death deed made by a co-owner of your property is not affected by this revocation form. A co-owner who wants to revoke a transfer on death deed that he/she made must complete and RECORD a SEPARATE revocation form.

**PROPERTY DESCRIPTION**

Print the legal description of the property affected by this revocation:

---

**REVOCATION**

I revoke any TOD deed to transfer the described property that I executed before executing this form.

**SIGNATURE AND DATE**

Sign and print your name below (your name should exactly match the name shown on your title documents):

\_\_\_\_\_ Date \_\_\_\_\_

### ACKNOWLEDGMENT OF NOTARY

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, (here insert name and title of the officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

### CHAPTER 3. EFFECT

#### Article 1. General Provisions

5650. During the transferor's life, execution and recordation of a revocable transfer on death deed:

(a) Does not affect the ownership rights of the transferor, and the transferor or the transferor's agent or other fiduciary may convey, assign, contract, encumber, or otherwise deal with the property, and the property is subject to process of the transferor's creditors, as if no revocable transfer on death deed were executed or recorded.

(b) Does not create any legal or equitable right in the beneficiary, and the property is not subject to process of the beneficiary's creditors.

1 (c) Does not transfer or convey any right, title, or interest in the  
2 property.

3 5652. (a) A revocable transfer on death deed transfers all of  
4 the transferor's interest in the property on the transferor's death  
5 according to the following rules:

6 ~~(1) Except as provided in paragraph (2), Subject to the~~  
7 ~~beneficiary's right to disclaim the transfer;~~ the interest in the  
8 property is transferred to the beneficiary in accordance with the  
9 deed.

10 (2) The interest of a beneficiary is contingent on the beneficiary  
11 surviving the transferor. Notwithstanding Section 21110, the  
12 interest of a beneficiary that fails to survive the transferor lapses.

13 (3) Except as provided in paragraph (4), if there is more than  
14 one beneficiary, they take the property as tenants in common, in  
15 equal shares.

16 (4) If there is more than one beneficiary, the share of a  
17 beneficiary that lapses or fails for any reason is transferred to the  
18 others in equal shares.

19 (b) Property is transferred by a revocable transfer on death deed  
20 subject to any limitation on the transferor's interest that is of record  
21 at the transferor's death, including, but not limited to, a lien,  
22 encumbrance, easement, lease, or other instrument affecting the  
23 transferor's interest, whether recorded before or after recordation  
24 of the revocable transfer on death deed. The holder of rights under  
25 that instrument may enforce those rights against the property  
26 notwithstanding its transfer by the revocable transfer on death  
27 deed.

28 (c) A revocable transfer on death deed transfers the property  
29 without covenant or warranty of title.

30 5654. (a) For the purpose of determination of eligibility for  
31 health care under Chapter 7 (commencing with Section 14000) or  
32 Chapter 8 (commencing with Section 14200) of Part 3 of Division  
33 9 of the Welfare and Institutions Code, execution and recordation  
34 of a revocable transfer on death deed is not a lifetime transfer of  
35 the property.

36 (b) Property transferred by a revocable transfer on death deed  
37 is subject to claims of the State Department of Health Care Services  
38 to the extent authorized by law.

1     5656. For the purpose of application of the property taxation  
2 and documentary transfer tax provisions of the Revenue and  
3 Taxation Code:

4     (a) Execution and recordation of, or revocation of, a revocable  
5 transfer on death deed of real property is not a change in ownership  
6 of the property and does not require declaration or payment of a  
7 documentary transfer tax or filing of a preliminary change of  
8 ownership report.

9     (b) Transfer of real property on the death of the transferor by a  
10 revocable transfer on death deed is a change in ownership of the  
11 property.

12  
13             Article 2. Other Instruments and Forms of Tenure  
14

15     5660. If a revocable transfer on death deed recorded on or  
16 before 60 days after the date it was executed and another instrument  
17 both purport to dispose of the same property:

18     (a) If the other instrument is not recorded before the transferor's  
19 death, the revocable transfer on death deed is the operative  
20 instrument.

21     (b) If the other instrument is recorded before the transferor's  
22 death and makes a revocable disposition of the property, the later  
23 executed of the revocable transfer on death deed or the other  
24 instrument is the operative instrument.

25     (c) If the other instrument is recorded before the transferor's  
26 death and makes an irrevocable disposition of the property, the  
27 other instrument and not the revocable transfer on death deed is  
28 the operative instrument.

29     5664. If, at the time of the transferor's death, title to the  
30 property described in the revocable transfer on death deed is held  
31 in joint tenancy or as community property with right of  
32 survivorship, the revocable transfer on death deed is void. The  
33 transferor's interest in the property is governed by the right of  
34 survivorship and not by the revocable transfer on death deed.

35     5666. (a) Chapter 2 (commencing with Section 5010) of Part  
36 1 applies to a revocable transfer on death deed of community  
37 property.

38     (b) For the purpose of application of Chapter 2 (commencing  
39 with Section 5010) of Part 1 to a revocable transfer on death deed  
40 of community property, written consent to the deed, revocation of

1 written consent to the deed, or modification of the deed, is  
2 ineffective unless recorded within the time required by that chapter  
3 for execution or service of the written consent, revocation, or  
4 modification.

5 5668. A revocable transfer on death deed of community  
6 property with right of survivorship is subject to Section 5666,  
7 relating to a revocable transfer on death deed of community  
8 property.

10 Article 3. Creditors

11  
12 5670. Notwithstanding any other statute governing priorities  
13 among creditors, a creditor of the transferor whose right is  
14 evidenced at the time of the transferor's death by an encumbrance  
15 or lien of record on property transferred by a revocable transfer  
16 on death deed has priority against the property over a creditor of  
17 the beneficiary, regardless of whether the beneficiary's obligation  
18 was created before or after the transferor's death and regardless  
19 of whether the obligation is secured or unsecured, voluntary or  
20 involuntary, recorded or unrecorded.

21 5672. Each beneficiary is personally liable to the extent  
22 provided in Section 5674 for the unsecured debts of the transferor.  
23 Any such debt may be enforced against the beneficiary in the same  
24 manner as it could have been enforced against the transferor if the  
25 transferor had not died. In any action based on the debt, the  
26 beneficiary may assert any defense, cross-complaint, or setoff that  
27 would have been available to the transferor if the transferor had  
28 not died. Nothing in this section permits enforcement of a claim  
29 that is barred under Part 4 (commencing with Section 9000) of  
30 Division 7. Section 366.2 of the Code of Civil Procedure applies  
31 in an action under this section.

32 5674. (a) A beneficiary is not liable under Section 5672 if  
33 proceedings for the administration of the transferor's estate are  
34 commenced and the beneficiary satisfies the requirements of  
35 Section 5676.

36 (b) The aggregate of the personal liability of a beneficiary under  
37 Section 5672 shall not exceed the sum of the following:

38 (1) The fair market value at the time of the transferor's death  
39 of the property received by the beneficiary pursuant to the

1 revocable transfer on death deed, less the amount of any liens and  
2 encumbrances on the property at that time.

3 (2) The net income the beneficiary received from the property.

4 (3) If the property has been disposed of, interest on the fair  
5 market value of the property from the date of disposition at the  
6 rate payable on a money judgment. For the purposes of this  
7 paragraph, “fair market value of the property” has the same  
8 meaning as defined in paragraph (2) of subdivision (a) of Section  
9 5676.

10 5676. (a) Subject to subdivisions (b), (c), and (d), if  
11 proceedings for the administration of the transferor’s estate are  
12 commenced, each beneficiary is liable for:

13 (1) The restitution to the transferor’s estate of the property the  
14 beneficiary received pursuant to the revocable transfer on death  
15 deed if the beneficiary still has the property, together with (A) the  
16 net income the beneficiary received from the property and (B) if  
17 the beneficiary encumbered the property after the transferor’s  
18 death, the amount necessary to satisfy the balance of the  
19 encumbrance as of the date the property is restored to the estate.

20 (2) The restitution to the transferor’s estate of the fair market  
21 value of the property if the beneficiary no longer has the property,  
22 together with (A) the net income the beneficiary received from the  
23 property prior to disposing of it and (B) interest from the date of  
24 disposition at the rate payable on a money judgment on the fair  
25 market value of the property. For the purposes of this paragraph,  
26 the “fair market value of the property” is the fair market value,  
27 determined as of the time of the disposition of the property, of the  
28 property the beneficiary received pursuant to the revocable transfer  
29 on death deed, less the amount of any liens and encumbrances on  
30 the property at the time of the transferor’s death.

31 (b) Subject to subdivision (c), if proceedings for the  
32 administration of the transferor’s estate are commenced and a  
33 beneficiary made a significant improvement to the property  
34 received by the beneficiary pursuant to the revocable transfer on  
35 death deed, the beneficiary is liable for whichever of the following  
36 the transferor’s estate elects:

37 (1) The restitution of the property, as improved, to the estate of  
38 the transferor upon the condition that the estate reimburse the  
39 beneficiary for (A) the amount by which the improvement increases  
40 the fair market value of the property restored, determined as of the



1 time of restitution, and (B) the amount paid by the beneficiary for  
2 principal and interest on any liens or encumbrances that were on  
3 the property at the time of the transferor's death.

4 (2) The restoration to the transferor's estate of the fair market  
5 value of the property, determined as of the time of the transferor's  
6 death, less the amount of any liens and encumbrances on the  
7 property at that time, together with interest on the net amount at  
8 the rate payable on a money judgment running from the time of  
9 the transferor's death.

10 (c) The property and amount required to be restored to the estate  
11 under this section shall be reduced by any property or amount paid  
12 by the beneficiary to satisfy a liability under Section 5672.

13 (d) An action to enforce the liability under this section may be  
14 brought only by the personal representative of the estate of the  
15 transferor. Whether or not the personal representative brings an  
16 action under this section, the personal representative may enforce  
17 the liability only to the extent of the beneficiary's liability under  
18 Section 5672. The reasonable cost of proceeding under this section  
19 shall be reimbursed as an extraordinary service under Sections  
20 10801 and 10811. Action under this section is optional. A personal  
21 representative is never required to act under this section.

22 (e) An action to enforce the liability under this section is forever  
23 barred three years after the transferor's death. The three-year period  
24 specified in this subdivision is not tolled for any reason. Nothing  
25 in this subdivision affects the requirements of Section 215, any  
26 law that may toll the limitations period for the commencement of  
27 a Medi-Cal estate recovery action, or the time for commencement  
28 of an action by the State Department of Health Care Services under  
29 Section 14009.5 of the Welfare and Institutions Code.

30 (f) If property is restored to the transferor's estate under this  
31 section, that property shall be treated as a specific gift and any  
32 proceeds remaining from the sale of the property after the payment  
33 of claims shall be returned to the beneficiary.

34  
35 CHAPTER 4. EFFECTUATION OF TRANSFER  
36

37 5680. (a) The beneficiary may establish the fact of the  
38 transferor's death under the procedure provided in Chapter 2  
39 (commencing with Section 210) of Part 4 of Division 2. For the  
40 purpose of this subdivision, the beneficiary is a person empowered

1 by statute to act on behalf of the transferor or the transferor's estate  
2 within the meaning of Section 103526 of the Health and Safety  
3 Code.

4 (b) For the purpose of filing the change in ownership statement  
5 required by Section 480 of the Revenue and Taxation Code, the  
6 beneficiary is a transferee of real property by reason of death.

7 (c) For the purpose of giving the notice to the Director of Health  
8 Care Services provided for in Section 215, the beneficiary is a  
9 beneficiary of the transferor.

10 (d) The beneficiary is liable to the transferor's estate for prorated  
11 estate and generation-skipping transfer taxes to the extent provided  
12 in Division 10 (commencing with Section 20100).

13 5682. If both of the following conditions are satisfied, a person  
14 dealing with a beneficiary of a revocable transfer on death deed  
15 of real property shall have the same rights and protections as the  
16 person would have if the beneficiary had been named as a  
17 distributee of the property in an order for distribution of the  
18 transferor's estate that had become final:

19 (a) The person acted in good faith and for a valuable  
20 consideration.

21 (b) An affidavit of death was recorded for the property under  
22 Chapter 2 (commencing with Section 210) of Part 4 of Division  
23 2.

#### 24 25 CHAPTER 5. CONTEST 26

27 ~~5690. (a) The transferor's personal representative or an~~  
28 ~~interested person may, under Part 19 (commencing with Section~~  
29 ~~850) of Division 2, contest the validity of a transfer of property~~  
30 ~~by a revocable transfer on death deed.~~

31 *5690. (a) (1) An action for the disqualification of a beneficiary*  
32 *under Part 3.7 (commencing with Section 21360) of Division 11*  
33 *may be brought to contest the validity of a transfer of property by*  
34 *a revocable transfer on death deed.*

35 *(2) An action to contest the validity of a transfer of property by*  
36 *a revocable transfer on death deed may be filed by the transferor's*  
37 *personal representative or an interested person under Part 19*  
38 *(commencing with Section 850) of Division 2.*

39 (b) The proper county for a contest proceeding is the proper  
40 county for proceedings concerning administration of the

1 transferor's estate, whether or not proceedings concerning  
2 administration of the transferor's estate have been commenced at  
3 the time of the contest.

4 (c) On commencement of a contest proceeding, the contestant  
5 may record a lis pendens in the county in which the revocable  
6 transfer on death deed is recorded.

7 5692. (a) A contest proceeding pursuant to Section 5690 shall  
8 not be commenced before the transferor's death.

9 (b) For the purposes of the applicable limitations period, a  
10 contest proceeding accrues on the date of the transferor's death.

11 5694. If the court in a contest proceeding determines that a  
12 transfer of property by a revocable transfer on death deed is invalid,  
13 the court shall order the following relief:

14 (a) If the proceeding was commenced and a lis pendens was  
15 recorded within 120 days after the transferor's death, the court  
16 shall void the deed and order transfer of the property to the person  
17 entitled to it.

18 (b) If the proceeding was not commenced and a lis pendens was  
19 not recorded within 120 days after the transferor's death, the court  
20 shall grant appropriate relief but the court order shall not affect  
21 the rights in the property of a purchaser or encumbrancer for value  
22 and in good faith acquired before commencement of the proceeding  
23 and recordation of a lis pendens.

24 5696. (a) Nothing in this chapter limits the application of  
25 principles of fraud, undue influence, duress, mistake, or other  
26 invalidating cause to a transfer of property by a revocable transfer  
27 on death deed.

28 (b) Notwithstanding subdivision (a) of Section 5692, the  
29 conservator or guardian of a transferor may, before the transferor's  
30 death, petition the court for invalidation of a revocable transfer on  
31 death deed executed by the transferor.

32 SEC. 18. Section 13111 of the Probate Code is amended to  
33 read:

34 13111. (a) Subject to the provisions of this section, if  
35 proceedings for the administration of the decedent's estate are  
36 commenced in this state, or if the decedent's personal  
37 representative has consented to the payment, transfer, or delivery  
38 of the decedent's property under this chapter and the personal  
39 representative later requests that the property be restored to the

1 estate, each person to whom payment, delivery, or transfer of the  
2 decedent's property is made under this chapter is liable for:

3 (1) The restitution of the property to the estate if the person still  
4 has the property, together with (A) the net income the person  
5 received from the property and (B) if the person encumbered the  
6 property after it was delivered or transferred to the person, the  
7 amount necessary to satisfy the balance of the encumbrance as of  
8 the date the property is restored to the estate.

9 (2) The restitution to the estate of the fair market value of the  
10 property if the person no longer has the property, together with  
11 (A) the net income the person received from the property and (B)  
12 interest on the fair market value of the property from the date of  
13 disposition at the rate payable on a money judgment. For the  
14 purposes of this subdivision, the "fair market value of the property"  
15 is the fair market value, determined as of the time of the disposition  
16 of the property, of the property paid, delivered, or transferred to  
17 the person under this chapter, less any liens and encumbrances on  
18 the property at that time.

19 (b) Subject to subdivision (c) and subject to any additional  
20 liability the person has under Sections 13109 to 13112, inclusive,  
21 if the person fraudulently secured the payment, delivery, or transfer  
22 of the decedent's property under this chapter, the person is liable  
23 under this section for restitution to the decedent's estate of three  
24 times the fair market value of the property. For the purposes of  
25 this subdivision, the "fair market value of the property" is the fair  
26 market value, determined as of the time the person liable under  
27 this subdivision presents the affidavit or declaration under this  
28 chapter, of the property paid, delivered, or transferred to the person  
29 under this chapter, less the amount of any liens and encumbrances  
30 on the property at that time.

31 (c) The property and amount required to be restored to the estate  
32 under this section shall be reduced by any property or amount paid  
33 by the person to satisfy a liability under Section 13109 or 13110.

34 (d) An action to enforce the liability under this section may be  
35 brought only by the personal representative of the estate of the  
36 decedent. Whether or not the personal representative brings an  
37 action under this section, the personal representative may enforce  
38 the liability only to the extent necessary to protect the interests of  
39 the heirs, devisees, and creditors of the decedent.

1 (e) An action to enforce the liability under this section is forever  
2 barred three years after presentation of the affidavit or declaration  
3 under this chapter to the holder of the decedent's property, or three  
4 years after the discovery of the fraud, whichever is later. The  
5 three-year period specified in this subdivision is not tolled for any  
6 reason.

7 (f) In the case of a nondomiciliary decedent, restitution under  
8 this section shall be made to the estate in an ancillary  
9 administration proceeding.

10 SEC. 19. Section 13206 of the Probate Code is amended to  
11 read:

12 13206. (a) Subject to subdivisions (b), (c), (d), and (e), if  
13 proceedings for the administration of the decedent's estate are  
14 commenced, or if the decedent's personal representative has  
15 consented to use of the procedure provided by this chapter and the  
16 personal representative later requests that the property be restored  
17 to the estate, each person who is designated as a successor of the  
18 decedent in a certified copy of an affidavit issued under Section  
19 13202 is liable for:

20 (1) The restitution to the decedent's estate of the property the  
21 person took under the certified copy of the affidavit if the person  
22 still has the property, together with (A) the net income the person  
23 received from the property and (B) if the person encumbered the  
24 property after the certified copy of the affidavit was issued, the  
25 amount necessary to satisfy the balance of the encumbrance as of  
26 the date the property is restored to the estate.

27 (2) The restitution to the decedent's estate of the fair market  
28 value of the property if the person no longer has the property,  
29 together with (A) the net income the person received from the  
30 property prior to disposing of it and (B) interest from the date of  
31 disposition at the rate payable on a money judgment on the fair  
32 market value of the property. For the purposes of this paragraph,  
33 the "fair market value of the property" is the fair market value,  
34 determined as of the time of the disposition of the property, of the  
35 property the person took under the certified copy of the affidavit,  
36 less the amount of any liens and encumbrances on the property at  
37 the time the certified copy of the affidavit was issued.

38 (b) Subject to subdivision (d), if the person fraudulently executed  
39 or filed the affidavit under this chapter, the person is liable under  
40 this section for restitution to the decedent's estate of three times

1 the fair market value of the property. For the purposes of this  
2 subdivision, the “fair market value of the property” is the fair  
3 market value, determined as of the time the certified copy of the  
4 affidavit was issued, of the property the person took under the  
5 certified copy of the affidavit, less the amount of any liens and  
6 encumbrances on the property at that time.

7 (c) Subject to subdivision (d), if proceedings for the  
8 administration of the decedent’s estate are commenced and a person  
9 designated as a successor of the decedent in a certified copy of an  
10 affidavit issued under Section 13202 made a significant  
11 improvement to the property taken by the person under the certified  
12 copy of the affidavit in the good faith belief that the person was  
13 the successor of the decedent to that property, the person is liable  
14 for whichever of the following the decedent’s estate elects:

15 (1) The restitution of the property, as improved, to the estate of  
16 the decedent upon the condition that the estate reimburse the person  
17 making restitution for (A) the amount by which the improvement  
18 increases the fair market value of the property restored, determined  
19 as of the time of restitution, and (B) the amount paid by the person  
20 for principal and interest on any liens or encumbrances that were  
21 on the property at the time the certified copy of the affidavit was  
22 issued.

23 (2) The restoration to the decedent’s estate of the fair market  
24 value of the property, determined as of the time of the issuance of  
25 the certified copy of the affidavit under Section 13202, less the  
26 amount of any liens and encumbrances on the property at that time,  
27 together with interest on the net amount at the rate payable on a  
28 money judgment running from the date of the issuance of the  
29 certified copy of the affidavit.

30 (d) The property and amount required to be restored to the estate  
31 under this section shall be reduced by any property or amount paid  
32 by the person to satisfy a liability under Section 13204 or 13205.

33 (e) An action to enforce the liability under this section may be  
34 brought only by the personal representative of the estate of the  
35 decedent. Whether or not the personal representative brings an  
36 action under this section, the personal representative may enforce  
37 the liability only to the extent necessary to protect the interests of  
38 the heirs, devisees, and creditors of the decedent.

39 (f) An action to enforce the liability under this section is forever  
40 barred three years after the certified copy of the affidavit is issued

1 under Section 13202, or three years after the discovery of the fraud,  
2 whichever is later. The three-year period specified in this  
3 subdivision is not tolled for any reason.

4 SEC. 20. Section 13562 of the Probate Code is amended to  
5 read:

6 13562. (a) Subject to subdivisions (b), (c), and (d), if  
7 proceedings for the administration of the decedent's estate are  
8 commenced, the surviving spouse is liable for:

9 (1) The restitution to the decedent's estate of the decedent's  
10 property if the surviving spouse still has the decedent's property,  
11 together with (A) the net income the surviving spouse received  
12 from the decedent's property and (B) if the surviving spouse  
13 encumbered the decedent's property after the date of death, the  
14 amount necessary to satisfy the balance of the encumbrance as of  
15 the date the decedent's property is restored to the estate.

16 (2) The restitution to the decedent's estate of the fair market  
17 value of the decedent's property if the surviving spouse no longer  
18 has the decedent's property, together with (A) the net income the  
19 surviving spouse received from the decedent's property prior to  
20 disposing of it and (B) interest from the date of disposition at the  
21 rate payable on a money judgment on the fair market value of the  
22 decedent's property. For the purposes of this paragraph, the "fair  
23 market value of the decedent's property" is the fair market value  
24 of the decedent's property, determined as of the time of the  
25 disposition of the decedent's property, less the amount of any liens  
26 and encumbrances on the decedent's property at the time of the  
27 decedent's death.

28 (b) Subject to subdivision (c), if proceedings for the  
29 administration of the decedent's estate are commenced and the  
30 surviving spouse made a significant improvement to the decedent's  
31 property in the good faith belief that the surviving spouse was the  
32 successor of the decedent to the decedent's property, the surviving  
33 spouse is liable for whichever of the following the decedent's  
34 estate elects:

35 (1) The restitution of the decedent's property, as improved, to  
36 the estate of the decedent upon the condition that the estate  
37 reimburse the surviving spouse for (A) the amount by which the  
38 improvement increases the fair market value of the decedent's  
39 property restored, valued as of the time of restitution, and (B) the  
40 amount paid by the surviving spouse for principal and interest on

1 any liens or encumbrances that were on the decedent's property  
2 at the time of the decedent's death.

3 (2) The restoration to the decedent's estate of the fair market  
4 value of the decedent's property, valued as of the time of the  
5 decedent's death, excluding the amount of any liens and  
6 encumbrances on the decedent's property at that time, together  
7 with interest on the net amount at the rate payable on a money  
8 judgment running from the date of the decedent's death.

9 (c) The property and amount required to be restored to the estate  
10 under this section shall be reduced by any property or amount paid  
11 by the surviving spouse to satisfy a liability under Chapter 3  
12 (commencing with Section 13550).

13 (d) An action to enforce the liability under this section may be  
14 brought only by the personal representative of the estate of the  
15 decedent. Whether or not the personal representative brings an  
16 action under this section, the personal representative may enforce  
17 the liability only to the extent necessary to protect the interests of  
18 the heirs, devisees, and creditors of the decedent.

19 (e) An action to enforce the liability under this section is forever  
20 barred three years after the death of the decedent. The three-year  
21 period specified in this subdivision is not tolled for any reason.

22 SEC. 21. (a) The California Law Revision Commission shall  
23 study the effect of California's revocable transfer on death deed  
24 set forth in Part 4 (commencing with Section 5600) of Division 5  
25 of the Probate Code and make recommendations in this regard.  
26 The commission shall report all of its findings to the Legislature  
27 on or before January 1, 2020.

28 (b) In the study required by subdivision (a), the commission  
29 shall address all of the following:

30 (1) Whether the revocable transfer on death deed is working  
31 effectively.

32 (2) Whether the revocable transfer on death deed should be  
33 continued.

34 (3) Whether the revocable transfer on death deed is subject to  
35 misuse or misunderstanding.

36 (4) What changes should be made to the revocable transfer on  
37 death deed or the law associated with the deed to improve its  
38 effectiveness and to avoid misuse or misunderstanding.

39 (5) Whether the revocable transfer on death deed has been used  
40 to perpetuate financial abuse on property owners and, if so, how



1 the law associated with the deed should be changed to minimize  
2 this abuse.  
3 (c) (1) The report required by subdivision (a) shall comply with  
4 Section 9795 of the Government Code.  
5 (2) Pursuant to Section 10231.5 of the Government Code, this  
6 section is repealed on January 1, 2024.

O